TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885

No. 497.

THE CINCINNATI, NEW ORLEANS, AND TEXAS PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED FEBRUARY 18, 1884.

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1 To the Honorable Thos. F. Harris, chief justice of the court of appeals of the Commonwealth of Kentucky:

The Cincinnati, New Orleans, & Texas Pacific Railway Company would respectfully represent and show unto your honor as follows:

That your petitioner is a railroad corporation organized under the laws of the State of Ohio, and as lessee is in possession of, controls, and operates a line of railroad which runs across the State of Kentucky, and so lies partly within the borders of that State.

That heretofore a suit was commenced in the circuit court of Franklin county, Kentucky, by the Commonwealth of Kentucky as plaintiff, against your petitioner as defendant, to recover from petitioner the sum of about $28,632.72, alleged to be due said Commonwealth as and for account of taxes for the year 1882, claimed to have been assessed for that year against your petitioner's line of railroad, within its borders by the board of railroad commissioners of that Commonwealth.

That said suit was taken by appeal to the court of appeals of Kentucky, which is the highest court of that State in which a decision in the suit could be had, and in that court a judgment was rendered on the 18th day of December, 1883, against your petitioner for the amount of the said Commonwealth's claim, to wit, the sum of $28,632.72, and costs. Said judgment is final, and no appeal
2 lies therefrom.

That a full transcript of the record in said suit is herewith presented and the same is made a part of this petition, being duly authenticated.

That, as appears from said record of said suit, your petitioner therein denied the validity of certain statutes of said Commonwealth of Kentucky upon which the plaintiff in said suit based its rights to recover, your petitioner pleading that said statutes were repugnant to the Constitution of the United States, and said decision and judgment of said court of appeals in said suit was in favor of their validity.

Said statutes of Kentucky are the act of 3rd April, 1878, entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation and for taxing same," and the act of 6th April, 1882, entitled "An act to prevent extortion and discrimination in the transportation of freights and passengers by railroad corporations, and, in aid of that purpose, to establish a board of railroad commissioners, and define its duties and powers," and the act of 19th April, 1882, entitled "An act to amend an act to prescribe the mode of ascertaining the value of property of railroad companies for taxation and for taxing the same, approved April 3rd, 1879."

By virtue of which statutes said Commonwealth assumed to invest the board of railroad commissioners with absolute power to
3 increase the value of the properties of railway companies for taxation arbitrarily and without notice or due process of law, and from whose decision no appeal was allowed, when, by the general statutes of that State, the properties of all other persons were pro-

tected from arbitrary assessments by enactments providing that notice should be given before even proof was heard tending to show that the value of same for taxation should be increased, as well as that every other person other than railroad corporations should have the right to an appeal, on all matters touching the valuation and assessment of his property for taxation, from the action of the assessor and the supervisors to the county court and to the circuit court, and when by the constitution of that State taxation under the authority thereof must be equal and uniform, and by the Constitution of the United States, "No State shall make or enforce any law which should abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

All of which appears in full in the record and proceedings in said suit, as shown by the said transcript thereof, herewith exhibited; and in the said final decision thereof manifest error hath been done, to the great damage of your said petitioner.

Wherefore said company prays for the allowance of a writ
4 of error and such other process as may cause the same to be corrected by the Supreme Court of the United States.

C. B. SIMRALL,
Att'y for Petitioners in Error.

Allowed.

THOMAS F. HARGIS,
Chief Justice of Kentucky.

5 *Assignment of Errors.*

CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY
vs.
THE COMMONWEALTH OF KENTUCKY.

The court erred in sustaining the validity of the statute of the Commonwealth of Kentucky, entitled An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation and for taxing the "same, approved April 3rd, 1878," when the same was repugnant to the Constitution of the United States.

2. The court erred in sustaining the validity of an act of the Commonwealth of Kentucky, entitled An act to amend an act to prescribe the mode of ascertaining the value of railroad property for taxation and for taxing the same, "approved April 19th, 1882," because said act was repugnant to the Constitution of the
6 United States, in that said act attempted to confer powers in violation of the provisions of the Federal Constitution.

3. The court erred in sustaining said statutes, because no State can make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. When by said statutes plaintiff in error was deprived of its property without due process of law, and was denied

the equal protection of the law guaranteed and granted to other citizens.

4. The court erred in affirming the judgment of the circuit court of Franklin county, Kentucky, in rendering judgment against plaintiff in error.

C. B. SIMRALL,
Att'y for Pl'ff in Error.

7 Pleas before the Hon. Thomas F. Hargis, chief justice, and the Hon. Thomas H. Hines, Hon. Wm. S. Prayor, and Hon. Joseph H. Lewis, associate judges of the court of appeals of Kentucky, at the capital, in the city of Frankfort, Kentucky, on the 18th day of December, 1883.

Be it remembered that the appellants, The Cincinnati, New Orleans and Texas Pacific Railway Company, filed in the clerk's office of the court of appeals of Kentucky the following transcript of record, viz:

KENTUCKY:

Franklin Circuit Court.

Proceedings before the Hon. P. U. Major, judge of the court aforesaid, at the court-house in the city of Frankfort, on the 3rd day of Mar., 1883.

Be it remembered that on the 25th day of January, 1883, the attorney general filed in the clerk's office of the court aforesaid the following petition:

8 *Petition.*

Franklin Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY CO., Def't.

The plaintiff states that the defendant is a railroad company and corporation, and is, and was during the year 1882, the owner of, by lease and operating, a line of railway lying in the State of Kentucky known as the Cincinnati Southern railway, and the same constructed under, and chartered and incorporated by, an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to authorize the trustees of the Cincinnati Southern railway to acquire the right of way and to extend a line of railway through certain counties in this Commonwealth," approved Feb'y 13th, 1882.

Plaintiff states that the defendant, for the purpose of assessment and taxation for the year 1882, as required by law, reported to
9 the auditor of public accounts of the State of Kentucky the total length of said road owned and operated by it as aforesaid and the value thereof per mile, and also reported its engines, cars, depot grounds, improvements, and other real estate, and the value thereof. The total valuation of said roads, including sidings and other taxable property as reported, was —— dollars.

Plaintiff states that after said report and valuation was made to the auditor of public accounts by the defendant, the board of railroad commissioners, who by law constitute a board of equalization to value and assess the railroad property of the State, after being sworn, as required by law, met on the first day of September, 1882, at the office of the auditor, in Frankfort, and with a majority of said board present constituting a quorum, the auditor placed before them the valuations, returns, and report made to him by defendant.

Plaintiff states that said board of equalization continued its sittings from day to day, as provided by law, of which the de-
10 fendant had due notice; and plaintiff avers that defendant did appear before said board by its officers, agents, and attorneys, and presented such facts, figures, and information and argument in relation to the valuation and assessment for taxation of its said property as it saw proper to.

Plaintiff states that said board, after a full hearing of defendant, by her officers, agents, and attorneys, and a full consideration of said returns, reports, information, and arguments before them valued and assessed for taxation for the year 1882 the defendant's line of said road lying in this State, the same reported by defendant to the auditor, together with the rolling-stock, engines, cars, depot grounds, improvements, and other real estate at the sum of $6,027,942.00, and on the —— day of September, 1882, returned and filed with the auditor of public accounts the record of said assessment and valuation, signed and attested, as provided by law, a certified copy of which, marked "A," is filed herewith as a part hereof.

11 Plaintiff states that the auditor of public accounts, before the 10th day of March, 1882, duly notified defendant of the amount of its assessment for taxation, and, as required by law, opened an account with defendant, charging it with the sum of $28,632.42, the amount of tax due the State of Kentucky upon said assessment and valuation of the defendant's property for the year 1882 at 47½ cents on the one hundred dollars, which is the rate of taxation prescribed by law on such property and all other real estate of the Commonwealth. A certified copy of said account is filed herewith as a part hereof, marked "B."

Plaintiff states that the defendant is indebted to him in the sum of $28,632.72 taxes due as aforesaid for the year 1882, no part of which has been paid.

Wherefore plaintiff prays judgment against the defendant for said debt and interest from October 10th, 1882, and for her costs
12 and all proper relief.

P. W. HARDIN,
Att'y Gen'l.

Auditor's Copy of Ac.

OFFICE AUDITOR OF PUBLIC ACCOUNTS,
FRANKFORT, KY., *January 23rd*, 1883.

Cincinnati, New Orleans & Texas Pacific Railway Company, Dr.

1882,
Oct. 10. To State taxes for 1882 on $6,027,942.00, @ 47½ cents on each $100 worth property ---------- $28,632 72

As shown by the report of the railroad commission of Kentucky, a copy of which follows:

STATE OF KENTUCKY:

19,709 miles, @ $30,000, including sidings and rolling-stock	$5,912,700 00
Other property	115,242 00
	$6,027,942 00

I hereby certify that the foregoing account is correct, as shown by the books on file in this *in this* office, and that the same has not been paid.

FAYETTE HEWITT, *Auditor.*

On the 25th day of January, 1883, a summons was issued
13 against the defendant, which has not been returned.

Demurrer Filed to Petition.

At a court held on the 21st day of February, 1883, the defendant filed a demurrer to plaintiff's petition.

Demurrer.

Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY, Pl'ff,
vs.
THE CINCINNATI, NEW ORLEANS, TEXAS PACIFIC RAILWAY COMPANY, Def't.

Now comes the defendant, The Cincinnati, New Orleans, and Texas Pacific Railway Company, and demurs to the petition of the plaintiff, because the same does not state facts sufficient to constitute a cause of action, and because the act under which the board of equalization undertook to assess the defendant's property for taxation, as alleged in plaintiff's petition, is a violation of the State of Kentucky and the Constitution of the United States.

C. B. SIMRALL,
Att'y for Def't.

Demurrer Overruled.

14 At a court held on the 1st day of Mar., 1883, the matters of law arising on the demurrer to the petition being heard, the court overruled the demurrer and defendants excepts and failing to answer—

Judgement.

It is adjudged that the plaintiff recover against the defendant the sum of twenty-eight thousand six hundred and thirty two and $\frac{72}{100}$ dollars, with interest at six per cent. per annum, from the 10th day of October, 1882, until paid; also 2% on the amount of principal and interest of this judgment, being for attorney general's fee; also the costs herein by her expended.

Appeal Granted.

The defendant excepts to the foregoing judgment and prays an appeal to the court of appeals, which is granted.

Judgment Set Aside.

At a court held on the 2nd day of Mar., 1883, the defendant appeared and on their motion the judgment herein is set aside.

Order Filing Answer.

Thereupon defendant by leave of court filed its answer.

15 *Answer.*

Franklin Circuit Court.

THE COMMONWEALTH OF KY., Pl'ff,
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY CO., Def't.

Now comes the Cincinnati, New Orleans and Texas Pacific Railway Company, defendant herein, and for answer to the petition of plaintiff says: That it admits that it is a corporation and the owner of, by lease, and operating a line of railway in the State of Kentucky, constructed under an act of the General Assembly of the Commonwealth of Kentucky, approved February the 13th, 1872, "entitled An act to authorize the trustees of the Cincinnati Southern railway to acquire the right of way and to extend a line of railway through certain counties in the Commonwealth."

It admits that for the purpose of assessment and taxation it reported to the auditor of public accounts of Kentucky the total length of its road in the State of Kentucky and the value
16 thereof per mile, and that it also reported its engines, cars, depot grounds, improvements, and other real estate, and the value thereof *the same.*

Defendant denies that it had due notice or any notice of the sittings of said board of equalization, or that defendant appeared before said board by its officers, agents, or attorneys, or that it presented to said board such facts, figures, and information in relation to the valuation and assessment of its property for taxation as it saw proper.

And defendant denies that it had any notice of the sittings from day to day, and it denies that said board gave to this defendant any

such notice or any opportunity to appear and be heard before said board in relation to the valuation and assessment of its property for taxation. And it denies that said board, after notice to this defendant, and after a full hearing, or after any hearing of defendant in relation to the valuation and assessment of its property for
17 taxation—assessed for taxation for the year 1882—the line of railroad belonging to defendants in the State of Kentucky, together with its rolling-stock, engines, cars, depot grounds, and other real estate, at the sum of $6,027,942.00.

But defendant says that said board made said valuation of the property of this defendant without any notice to this defendant and without giving to the defendant an opportunity to be heard in relation to said valuation so made by said board of railroad commissioners.

And defendant denies that it is indebted to the Commonwealth of Kentucky in the sum of $28,632.72, or in any other sum, for taxes for the year 1882, and it prays to be hence dismissed with its costs.

II. For further answer to the petition of the plaintiff defendant says that plaintiff ought not to recover against this defendant the sum of $28,632\frac{72}{100}$ for taxes due from this defendant for the
18 year 1882, as is alleged in plaintiff's petition, because the assessment of defendant's property for taxation by said board of equalization, as set out in plaintiff's petition, was wholly illegal and void, and was made without warrant and authority of law, and in violation of the constitution of the State of Kentucky, in that said board of equalization had no right or power under the constitution of the State of Kentucky to make said assessments or to make any assessment of valuation of defendant's property for taxation.

And for further answer defendant says that said assessment is illegal and void, because the law under and in pursuance of which said assessment and valuation was made provided for no notice to defendant of the proposed assessment or valuation of its property, and provided no opportunity for defendant to be heard in respect to the valuation of its property for taxation, or for the correction
19 of errors of valuation made by said board, and that said assessment was made without notice to defendant.

For further answer defendant says that said assessment is illegal and void, in that the said assessment was made without notice to this defendant, and that the law under and in pursuance to which said assessments and valuations were made provide for no notice to be given to defendant of the making of said valuations and assessments for taxation, and provided for no time or place for defendants to be heard before its liability for the taxes under said assessment became fixed, and provided for no appeal from errors in said assessment. And defendant says that, with reference to the assessment or valuation of all other property in the State for taxation, the law requires that notice shall be given the owner of the property of said assessments, with an opportunity of being heard with refer-
20 ence to the same before their liability under said assessments became a fixed liability, with the right of appeal in case of error in said assessment.

And defendant says that, under the law authorizing the assessment of defendant's property for taxation, as set out in plaintiff's petition, defendant is denied the protection of the law extended to other property holders in the State, and that defendant under said law is denied an equal protection of the law. And defendant says that said law under which said board acted in assessing and valueing defendant's property for taxation, as is set out in plaintiff's petition, is in conflict with the constitution of the State of Kentucky and with article XIV of the amendments of the United States.

Wherefore defendant prays that this honorable court adjudge and decree the assessment and valuation of defendant's property
21 for taxation, as made by said board of equalization or railroad commissioners, null and void, and that defendant may be dismissed with costs.

C. B. SIMRALL,
Att'y for Defendant.

STATE OF OHIO, }
Hamilton County, } *ss:*

John Scott, being duly sworn, says: That he is the president of The Cincinnati, New Orleans and Texas Pacific Railway Company duly authorized in the premises, and that the allegations in the foregoing answer are true, as he verily believes.

JOHN SCOTT.

Sworn to and subscribed before me, this 19th day of Feb'y, A. D. 1883.

CHARLES M. CIST,
Notary Public, Hamilton County, Ohio.

Issues of Fact raised by Answer withdrawn. Pl'ff's Dem'r to Ans. Sustained.

At a court held on the 3rd day of Mar., 1883, came the defendant and withdrew all the issues of fact raised by its answer. Thereupon the plaintiff demurred generally to each paragraph thereof, and the demurrer being heard was sustained by the court, and def't excepts.

22 *Judgment.*

The defendant failing and declining to plead further, it is adjudged that the plaintiff recover against the defendant the sum of twenty-eight thousand six hundred and thirty-two & $\frac{72}{100}$ dollars, with interest at 6 % per annum from the 10th day of October, 1882, until paid; also 2 % on the amount of principal and interest of this judgment, being for attorney general's fee; also the costs of this proceeding. To all of which the defendant excepts and prays an appeal to the court of appeals, which is granted.

On the 8th day of March, 1883, the following assignment of errors and schedule were filed in the clerk's office:

Assignment of Errors & Schedule.

Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY
vs.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY CO.

The defendant comes and assigns for error herein—

23 1st. The court erred in overruling defendant's demurrer to plaintiff's petition.

2nd. The court erred in sustaining the plaintiff's demurrer to the defendant's answer.

3rd. The court erred in rendering judgment against the defendant from which the appeal was granted to the court of appeals.

C. B. SIMRALL,
For Defendant.

Schedule.

For the purpose of the appeal in the above-styled case the clerk will copy the entire record.

C. B. SIMRALL.

STATE OF KENTUCKY:

Franklin Circuit Court.

I, W. Franklin, clerk of the court aforesaid, do certify that the foregoing thirteen pages and above lines contain a full, true,

24 and complete transcript of the record and proceedings had in the cause therein mentioned so far as the same is on file in said cause.

Witness my hand, this 15th day of March, 1883.

W. FRANKLIN, *C. F. C. C.*,
By ROB'T B. FRANKLIN, *D. C.*

Fee for record, $3.50.

Statement.

Court of Appeals.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, Appellants,
vs.
THE COMMONWEALTH OF KY., Appellee.

This appeal is to stand on the docket as above set out. The judgment appealed from was rendered by the Franklin circuit court on the 30th day of March, 1883. It will be found on page 12. No process is required. The appeal was granted by the court below.

C. B. SIMRALL,
Attorney.

25 And afterwards, to wit, at a court of appeals continued and held for the Commonwealth of Kentucky, at the capital, in the city of Frankfort, on the 2nd day of October, 1883:

Order.

This day this cause came on to be heard, and was argued by C. B. Simrall for appellant, and laid over for further argument.

And afterwards, to wit, at a court of appeals continued and held for the Commonwealth of Kentucky, at the capital, in the city of Frankfort, on the 3rd day of October, 1883:

Order.

This day this cause came on for hearing, and was argued by A. Duvall for appellee, and laid over for further argument.

And afterwards, to wit, at a court of appeals continued and held for the Commonwealth of Kentucky, at the capital, in the city of Frankfort, on the 4th day of October, 1883:

This day this cause came on for hearing, and was argued by Holm-s Cummins for appellant, and laid over for further argument.

26 And afterwards, to wit, at a court of appeals continued and held for the Commonwealth of Kentucky, at the capital, in the city of Frankfort, on the 5th day of October, 1883:

Order.

This day this cause came on for hearing, and was argued by Attorney General Hardin for appellee, and laid over for further argument.

And afterwards, to wit, at a court of appeals continued and held for the Commonwealth of Kentucky, at the capital, in the city of Frankfort, on the 6th day of October, 1883:

Order.

This day this cause [came] on for hearing, and was argued by Attorney General Hardin for appellee, and laid over for further argument.

And afterwards, to wit, at a court of appeals continued and held for the Commonwealth of Kentucky, at the capital, in the city of Frankfort, on the 8th day of October, 1883:

Order.

27 This day this cause came on for hearing, and was argued by Wm. Lindsey for appellant, and was submitted to the court.

And afterwards, to wit, at a court of appeals continued and held for the Commonwealth of Kentucky, at the capital, in the city of Frankfort, on the 18th day of Dec., 1883:

Judgment.

The court being sufficiently advised, it seems to them that there is no error in the judgment herein. It is considered that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its costs herein expended.

The opinion delivered by the court in this cause, is as follows, viz:

"The Cincinnati, New Orleans and Texas Pacific, the Chesapeake, Ohio and South Western, and the Louisville and Nashville Railway Companies are in this court as appellants complaining of a judgment rendered by the Franklin circuit court against them in favor
28 of the State for taxes alleged to be due and unpaid for the year 1882. The proceeding is by an ordinary action, authorized by the provisions of the act of April, 1878, entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation, and for taxing the same." The appellants in their answer below insist that the mode of assessment or valuation of railroad property for taxation, as prescribed by the State, is in direct conflict with the Constitution of the United States and the constitution of this State, and, therefore, the proceeding below should have been dismissed.

In order to a correct understanding of the issue made between the State and the appellants, it is proper to notice the several legislative enactments under which the taxation in this case was imposed, and to review briefly the past legislation of the State with reference to the manner of assessing the property of such corporations.
29 By the provisions of the first section of the act of Apr. 3rd, 1878, the president or chief officer of each railroad company is required, in the month of July in each year, to return to the auditor of public accounts, under oath, the total length of such railroad, &c., with the average value per mile thereof, for the purpose of being operated as a carrier of freight and passengers, including engines, cars, and a list of the depot grounds and improvements and other real estate of the company, and the value thereof. By the third section the Governor is required to appoint three disinterested freeholders, citizens of the State, who shall constitute a board of equalization, who shall meet annually at the office of the auditor, in Frankfort, on the first day of September in each year, a majority present constituting a quorum for the transaction of business, and at said meeting the auditor shall lay before them the returns
30 made to him under this act, and should the valuation of any of them, in the judgment of the board, be either too high or too low, they shall correct and equalize the same by a proper increase or decrease thereof. It is further provided that their service shall not be for a longer period of time than twenty days in any one year. By section four, "The same rate of taxation for State purposes, which is or may be in any one year levied upon other real estate in the Commonwealth, shall be, and is hereby, levied upon the value so found by the said board of the railroad, rolling stock, and real estate of each

company. When the valuations are complete notice is given by the auditor to each railroad company of the amount of its assessment for taxation for State purposes, &c. And the taxes are required to be paid on or before the 10th day of October in each year, and upon default made the taxes in behalf of the Commonwealth
31 may be recovered by action in the Franklin circuit court.

The act of April 3rd, 1878, was amended by an act approved Apr. 19th, 1882, by which the board of railroad commissioners appointed under the provisions of an act approved Apr. 6th, 1882, were required "to perform all the powers and duties conferred upon the board of equalization by the act to which this is an amendment." This last enactment substituted the railroad commissioners as the board in room of the freeholders to be appointed by the Gove-nor, whose duty it was, by the act of April 3rd, 1878, when the valuations placed on railroad property were too high or too low, to correct and equalize the same by a proper increase or decrease thereof. The act creating the board of railroad commissioners is entitled "An act to prevent extortion and discrimination in the transportation of
32 freight and passengers by railroad corporations, and in aid of that purpose to establish a board of railroad commissioners, and define its powers and duties."

The purpose of that act seems to have been to invest the board with a supervisory power over railroad companies, so as to regulate and prevent improper charges for carrying freight and passengers, and to subject such companies, upon information made, to certain penalties, when guilty of extortion. The provisions of the nineteenth section of this act would conduce to the conclusion that the Legislature intended to confer upon the board judicial power in authorizing them to hear complaints and render judgments in cases where railroad companies have violated the provisions of the first and second sections of the enactment; but a careful consideration of the act will show an intention to give to the circuit court
33 exclusive jurisdiction to enforce the fines and penalties imposed, and no other jurisdiction is conferred.

The award of the board of commissioners, if such power is given by the nineteenth section, is but the basis of a prosecution to be instituted in a tribunal having jurisdiction of the subject-matter. The commissioners, under the act in question, constitute a mere advisory board, without any power except to receive reports from railroad companies in the manner prescribed by the act, and to hear complaints and give information when, in their opinion, the railroad companies, or any of them, have violated the law. They may suggest the mischief, but are powerless to afford a remedy, except by information to some other tribunal. If the power to render an award should exist we perceive no reason why, under the enactment, they could not assess the property of the corporations
34 and exercise such ministerial duties as is required of them by the acts of Apr. 3rd, 1878, and its amendments, and the act of Apr. 6th, 1882.

The act of valuation is in its character judicial, but the general duties of this board are ministerial, and for the exercise of such du-

ties the board was organized, and while the law creating it is in many respects imperfect, the court may disregard the nineteenth section of the act of April 6th, 1882, leaving the board to discharge all the other duties imposed by the act, and thus obviate the objection made by counsel that the act of April 6th, 1882, is in violation of section two of article one of the State constitution, providing that "no person, or collection of persons, belonging to one of these departments (legislative, executive, and judicial) shall exercise any power properly belonging to either of the others, except in the instance hereinafter expressly permitted." The appellants in
35 this case in the year 1882 made returns to the auditor as required by the provisions of the act of Apr. 3rd, 1878, stating under oath what they regarded as a fair valuation of their roads for the purposes of taxation. The board of commissioners, as is alleged, increased this valuation, and for that reason appellants declined to pay the tax imposed, and for these taxes the judgment below was obtained. Two of the appellants paid to the auditor the amount of the taxes due upon the valuation as fixed by the chief officer of each corporation, but the Cincinnati, New Orleans and Pacific Railway Company declined to make any payment, in order, as they now state, that it might be heard on the constitutional questions involved.

It is alleged in the petition by the State that the appellants were present and heard by the board of commissioners upon the
36 question of valuation, nor do we understand that appellants are complaining so much of the valuation placed upon their respective roads as of what they designate the arbitrary power conferred upon the board by the act in question. They maintain that under the enactment the hearing before the commissioners was a matter of favor only and not of right, and that this case should be considered as if the valuation had been increased or fixed by the board without the presence of any of the officers of the corporation and without express notice of the purpose of the board to increase the value of the railroad property, and in this light it is perhaps proper to consider the question that the rights of these parties may be finally determined. It is maintained by the appellant that the Legislature of the State has no power to provide any mode for taxing railroads which will deprive them of the same rem-
37 edies that other tax-payers have against arbitrary assessments or which will make the property of such corporations contribute more than their just and equitable share of the burden of taxation.

Before proceeding to the consideration of the principal question involved it will be necessary to notice the present mode of assessment, with the remedies afforded the citizen for decreasing the valuation of his property when the estimate placed upon it by the assessor exceeds its value. The right of the citizen to a hearing, when his property has been assessed for the purposes of State revenue, has been seldom embodied in our system of taxation, and for the greater period of time during the existence of the State government there was no remedy afforded, but that of legislative inter-

ference when the only ground of complaint was that his property had been assessed for more than its value. From the
38 year 1873 to the year 1878 no appeal was allowed from the action of the assessor to any tribunals for the purpose of hearing such complaints, and we are not aware of any question made as to the constitutionality of such a revenue law. The doctrine, "that the mode of levying, as well as the right of imposing, taxes is completely and exclusively within the power of the Legislature," has always been adhered to by the courts of this State, for the palpable reason, as stated by Mr. Justice Cooley in his work on "Constitutional Limitations:" There is no reason for the supposition that in a matter of this public importance, when promptitude in collection is always desireable and often imperative, dilatory proceeding of this nature (through the forms of process and a jury trial) were within the contemplation of the people when consenting to any general provision of the constitution. The very existence of
39 the Government depends upon this sum-ary mode of collecting its revenue, and the delay occasioned by appeals to the judicial tribunals of the State upon the mere question as to the value of the property, while it might in some instances relieve the citizen, would conduce to distroy the Government, by taking from it that attribute of sovereignty, without which it cannot exist. As said by the Supreme Court in the case of Providence Bank *vs.* Billings, reported in 4 Peters: "The interest, wisdom, and justice of the representative body and its relations with its constituents furnish the only security, when there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally." And in the case of St. Louis *vs.* The Ferry Company, 11 Wallace, the same Court said: It has been said that the power of taxation for the purposes of the Commonwealth is a part of
40 all governmental sovereignty, and it is insepe-able from it. It is for the Legislature to decide what persons and property shall be reached by the exercise of this function, and in what proportions, and by what process and instrumentalities taxes shall be assessed and collected." In the case of a State tax imposed on bonds held outside of the State reported in 15 Wallace, it is further said: "Unless restrained by the opinions of the Federal Constitution the power of the State as to the mode, form, and extent of taxation is unlimited when the subjects to which it applies are within her jurisdiction." And in the case of Kortland *vs.* Hothchkiss, in 10 Otto, the same general princip*al* is again recognized.

The abuse of this power by the State was never held as sufficient to warrant interference by the Federal judiciary. While this power as to the mode and amount of taxation is to be exercised alone by the Legislature—"and no attribute of sovereignty is more per-
41 vading"—the legislative department of the Government is not clothed with the power of confiscating the property of the citizen under the guise of taxation. Certain elements, says Mr. Justice Cooley, are essential in all taxation. "It does not necessarily follow because the power is so vast that everything which may be done under pretense of its exercise will leave the citizen

without redress even (if) there be no conflict with any express constitutional inhibition." "Absolute arbitrary power over the liberty and property of the citizen exists nowhere in a republic, not even in the largest majority." (Bill of rights, section 2.)

The Legislature has no such power as to discriminate between the citizen by making one or more assume the entire burden of taxation and exempt the others. Ap-roximate equality in distributing the burden and uniformity in the mode of assessment is the cardinal rule; and, as said by this court in the case of the
42 City of Lexington *vs.* McQuillan's Heirs, "that while taxation may not be universal it must be general and uniform." Equality such as is practicable is essential to the constitutionality of taxation, and the only exception is found in cases of local taxation when the special benefits authorize the imposition of the burden upon those who derive the benefits. From the case of the City of Lexington *vs.* McQuillan's Heirs (9th Dana), decided in the year 1840, and the intermediate cases, including the case of Preston *vs.* Roberts, decided at the January term, 1877, this court has held the rule as to uniformity and equality to be fundamental, and gone as far perhaps as the courts of any State in the Union in protecting the citizen against oppressive and arbitrary taxation. "That there shall be equality as far as is reasonably practicable in the distribution of public burdens, whether local or general, is a cardinal prin-
43 cip*al* in the law of taxation, and flagrant departure from that rule ought not to be allowed unless a more equal distribution under the circumstances is unattainable." (Preston *vs.* Roberts, 12 Bush.) Wh*e*ather this cardinal rule has been violated we shall now proceed to inquire.

Under the general laws for assessing property, real and personal, in this State for taxation the owner is required to test it under oath with the assessor, and after this has been done the assessor, upon his own knowledge and other evidence, fixes a full and fair valuation on the property. (See sections 11, 13, & 16 of article 5, chap. 92, General Statutes.) By article six of the same chapter a board of supervisors, consisting of three tax-payers, citizens, is appointed by the county court, with the power to correct any errors committed by the assessor, wh*e*ather in fact or in relation to the valuation of the property listed, and when the property has not been cor-
44 rectly valued to fix a proper value on the same." (Section 6, article 6.) By an act approved April 2nd, 1878, this last act was so amended as to prevent the board from changing the value of the property as fixed by the assessor without giving notice to the owner, to be served by any officer authorized by law to serve a summons. The party aggrieved may, if the board decides against him, appeal to the county judge, and, if over fifty dollars, may appeal from the decision of the county judge to the circuit court. The Legislature having seen proper to submit this question of valuation, at the instance of the citizen, to the courts of the State, and not leaving it with the revisory board, being merely a question of policy, no necessity exists for inquiring into the expediency of the measure, as in either case, after the property has been assessed, the increase in valuation is

not to be made without a hearing by the party whose rights are to be affected by the decision of the board. These appellants, the
45 railroad companies say that the remedy afforded the citizen under the general law is not only withheld from them, but they are denied the right to a hearing before the tribunal, board of commissioners, whose judgment becomes final as to the question of valuation. The board of railroad commissioners are required to meet annually, at the office of the auditor in Frankfort, on the 1st day of September in each year, for the purpose of correcting and equalizing the value of the property of these corporations, and the same rate of taxation for State purposes which is or may be in any year levied on other real estate in this Commonwealth shall be levied on the value so found by the board. A railroad must necessarily be regarded as a unit, and as this court has determined, by reason of legislative authority, must be taxed as such. Its rolling stock cannot be seized and subjected for taxes as seized for
46 municipal purposes, nor are the railroads listed by the assessors of the counties through which they may pass for taxation. All of the locomotives, cars, etc., are treated as fixtures, and there is no better or more practical mode of assessing such property than to treat the whole as real estate. The principal object of the Legislature in having this board of commissioners to assess and supervise the taxing of such companies was that no injustice might be done the companies by subjecting their property to fragmentary assessments, subject to the revision of the supervising boards of each county through [which] the roads might run.

Fragmentary taxation of the same line of road by a dozen or more different assessors would scarcely produce that uniformity in assessment so absolutely essential to produce equality in taxation,
47 and the legislative purpose was to obviate such an objection and have a uniform assessment of this class of property, and no wiser suggestion could have been well made than to place the valuation in the hands of a board of intelligent freeholders to be selected by the executive of the State, thus removing the question of value from local influences and prejudices that often result in imposing upon such corporations oppressive burdens.

These corporations should contribute their just proportions of the public burden and no more. They have not been taxed on their property in a greater sum than any other owner of real estate, and, when enjoying greater rights and privileges in the use of their property than ordinarily pertains to the individual owner of real estate, they should not complain of the mode of assessment that must, in its results, produce equality in the distribution of the tax. While these companies may not have the right to appear
48 before the county board of each county, they have had the valuation of their property fixed by the railroad commissioners, and are not even complaining now that the valuation is too high. The classification of property in this State for the purposes of taxation has been the subject of much legislation. Corporations, such as banks, insurance companies, express companies, and railroad companies, have been required to list or have their property

assessed in a different mode than that prescribed by the general law. Specific taxation is the rule with reference to corporations of one class and a mode different from the general law designated in determining the value of other corporate property. The constitutionality of such legislation is now being questioned. When no discrimination is made to appear, and no greater burden imposed on the property of appellants than upon the other property of the State, whether belonging to individuals or corporations; when
49 the citizen is permitted to leave the board of supervisors and go by an appeal to the circuit court to have his tax decreased, there arises a much more serious constitutional question than is presented in this case. The imposition of taxes is not a judicial function; still, under the statute of this State, the courts of the State are required to *been* complaints as to the valuation of property by the revisory board, and to fix the value of the property to be taxed, or direct the board from which the appeal emanates to enter the opinion of the court as to the amount for which the citizen should be taxed. The chancellor and common-law judge should hesitate before converting themselves into tax-gatherers or assessors, although the ascertainment of value may be in the nature of a judicial finding. It is only a question with the Legislature whether the property of such corporations shall be assessed by the railroad
50 commissioners, whose judgment shall be final, or subject their property to assessment by the county assessors, subject to revision by the county supervisors or the county judge.

This question has in effect been decided by the Supreme Court of the United States, in an appeal from the supreme court of Illinois, in an opinion rendered by Mr. Justice Miller, in what is known as "the State railroad tax cases," reported in 2 Otto. It was alleged in one of these cases that the value of the railroad track, as returned by the chief officer of the company to the county clerk and auditor, was $648,436.41, and that the State board of equalization had assessed the value of the railroad track at $1,629,556; that the aggregate value of the rolling-stock, as returned to the auditor, was $338,039, and the aggregate value as fixed by the board of equalization was $1,000,110. It was further alleged that the assessments had been made without notice to the railway company.
51 The law in regard to assessments of railroad property in the State of Illinois is very similar to that in existence in this State, the principal difference being that the movable property of such corporations is deemed personalty.

The State, county, and city taxes are collected on the assessments made by the board of equalization. It has larger power than is confided to the board of railroad commissioners of this State.

The tax-payer in the State of Illinois, as in this State, must have notice before his property is increased in its value by the town or county supervisors, while the valuation of the corporate property may be increased by the State board without actual notice. It is true the State board may increase the valuation of the property of any citizen in the same way, but this does not deprive him of the right of notice when the county or township supervisors under-

take to increase the value. This action of the county or
52 town supervising board may, and doubtless does, control the action of the board of equalization. The citizen has the benefit of the action of the county boards, and corporations submit alone to the action of the State board; so there is but little, if any, difference in the questions involved in those cases and the one being considered. It is argued, however, that the constitution of the State of Illinois expressly confers upon the General Assembly the power "to tax persons or corporations owning or useing fra-chises and privileges in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates." This provision of the Illinois constitution, although not found in the constitution of this State, is but the recognition of a power that exists with the Legislature in the absence of a constitutional provision. It is not necessary or even practical that the mode of assessing and taxing property shall be uniform, but all
53 property or kinds of property must be taxed equally and at a uniform rate. The mode of assessing the property of a railroad cannot well be similar to the general mode of assessment; and, if the mode adopted does not make corporate property contribute more than its just share of the burden, the proceeding is not open to constitutional objection on that ground. One county assessor would have the same right to assess that another would when the road ran through the county of each; and, therefore, the necessity of resorting to some other instrumentality for the purpose of fixing the value. It is further maintained by counsel for the appellants that the denial to these companies of the right to be heard or the absence of an express provision in the act, requiring notice to be given of the proceedings of the board, renders the assessment void. This identical question was decided in the tax cases referred
54 to when the board had increased the assessment or value fixed by the local board or chief officer of the railroad company, in the absence of any notice required by the act, and upon the allegation that no notice had been given. We are aware that in those cases the appellants were seeking an injunction against the collection of the tax, and the difference existing between that class of cases and those where the State undertakes by an action in a court of law authorized by statute to enforce payment of the tax, a defense would be permitted to be made to the action at law that would not authorize the granting of an injunction by a court of equity. This rule cannot affect the constitutional question. It is urged that the assessment is in violation of the Federal Constitution; and if so, it was void, and should have been so held by the chancellor. In response to that argument Mr. Justice Miller, speaking for the court, said: "It is hard to believe that such
55 a proposition can be seriously made, because if void as to the railroad companies it must be equally void as to every other owner of property in the State. If the corporation is entitled to notice, every individual is equally entitled to it. The board had its time of sitting fixed by law. Its sessions are not secret. No obstructions exists to the appearance of any one before it to assert a

right or redress a wrong." The appellants urge that notice is indispensable, and, as said by the learned judge, if so it must be void as to all. But it is said that the board of commissioners in this State have no supervisory power over any property but that of railroad property, and, therefore, the cases referred to have no application. This can make no difference if actual notice is required before an assessment can be made or an opportunity to be heard after
56 the assessment has been made. The cases are identical so far as affects the constitutionality of the act. The opinion in the tax cases of the county of Santa Clara and others against various railroad companies, delivered by Mr. Justice Field in the ninth circuit, district of California, has been referred to in support of the position assumed by appellants.

It was held in the opinion of those cases that until the adoption of the Fourteenth Amendment there was no restraint to be found in the Constitution of the United States against the exercise of the taxing powers of the States, but that the first section of the Fourteenth Amendment, declaring that "No State shall make or enforce any law which should abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to
57 any person within its jurisdiction the equal protection of the laws," prohibits the imposition of unequal burdens by the State, and, therefore, gives to the Federal judiciary jurisdiction over such questions. Whether or not this is a proper construction of the amendment is a question not before us and in regard to which we express no opinion.

Unjust discrimination in imposing taxation, when irregularity is necessarily produced, has never met the approval of this court, but, on the contrary, has always been held to be unconstitutional; but we are not prepared to say that the ordinary mode of assessing property is invalid for want of actual notice to the owner. The assessment is made by the assessor upon the oath of the owner and other evidence, and because the owner has no appeal or revisory board to revise the assessment, affords no constitutional objection to the law. Section 12 of bill of rights provides "that no one can be
58 deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land." The words "law of the land" are equivalent to due process of law, and mean the right to be heard for the preservation and protection of life, liberty, and property, but it was never supposed that this provision of the bill of rights applied to the exercise of sovereignty in imposing taxes for the preservation and maintenance of the government, other than the right of the assessor to value the property upon the oath of the tax-payer and other evidence, as provided by the statute, and if dissatisfied with the valuation the owner, in the absence of a provision giving him a further hearing, must look to the Legislature for relief, and not to the judicial tribunals of the State.

Such has been the uniform construction of the State courts when the term due process of law, or its equivalent, is found in State
59 constitutions and attempted to be applied to questions affect-

ing State taxation for revenue purposes. The burden of State taxation is made at last to rest upon the shoulders of those whose incomes, while they furnish a comfortable support, seldom result in adding to the capital invested. They make no complaint of the burden, but capital at war with taxation, when it affects the income of the State, imposes what is conceived to be too onerous a burden, is demanding an appeal either to the revisory board or the judicial tribunals of the State, resulting often in exemption from a just and proper taxation. The hands of the sovereign are tied and the State government on the verge of bankruptcy while the propriety of the tax is being considered by State and local tribunals.

"With regard to the precise mode of exercising the taxing power the Legislature, unless restricted by some constitutional provision, seems to be invested with entire discretion." (Hilliard on Tax-
60 ation, page 3.) The Supreme Court of the United States, in the case of Kelly *vs.* Pittsburgh, reported in 14 Otto, uses the following language: "The main argument of the plaintiff in error, the only one to which we can listen, is that the proceeding in regard to the taxes assessed on his land deprives him of his property without due process of law. It is not asserted that in the method by which the value of his land was ascertained for the purpose of taxation [there] was any departure from the usual mode of assessment. In these respects there *is* no charges that the method pursued is not due process of law. Taxes have not, as a general rule, in this country, since its independence, nor in England before that time, been collected by regular judicial proceedings. The necessities of government, the nature of the duty to be performed, and the customary usages of the people have established a different procedure, which in regard to that matter is, and always has been, due process of law."

61 In High *vs.* Shoemaker, 22 California, the court said: "Because universal practice had established at the time our constitution was adopted that this provision (referring to due process of law) in the constitution was not understood as applicable to proceedings by the State to obtain from citizens their proper contributions to the expenses of administering the government."

Again, the tax cases reported in 2 Otto, the Court, alluding to the Federal Statute of 1867, prohibiting a suit in any court for the purpose of restraining the assessment or collection of any tax, says: "And though this was intended to apply alone to taxes levied by the United States it shows the sense of Congress of the evils to be feared if courts of justice could in any case interfere with the process of collecting taxes on which the government depends for its continued existence. It is a wise policy. It is founded on the simple philosophy derived from the experience of ages, that the
62 payment of taxes has to be enforced by sum-ary and stringent means against a reluctant and often adverse sentiment, and to do this successfully other instrumentalities and other modes of procedure are necessary than which belong to courts of justice." The mode of assessing and collecting taxes is not in the nature of a judicial proceeding. It is not a judicial inquiry when parties must

have notice and the right to be heard. Revisory boards may be established and appeals allowed by the legislative department of the State; but such modes of relief arise from questions of expediency, but cannot be demanded as constitutional right. Where an assessment has been made in the manner prescribed by the statute, and tribunals are organized with a view of disturbing that assessment by increasing the value of the property taxed, the party affected by it ought to have an opportunity to be heard; and
63 it is in this class of cases where it is asserted that the constitutional right to be heard cannot be denied; but even in a revisory board, with full power to revise the acts of the assessor, it would be impracticable to give such notice as is usual in judicial proceedings before the board can take action. The time and place of meeting, having been fixed by law, is notice to all, and if the reports of the chief officers of these corporations are to be regarded as an assessment and the commissioners as a board of review, the act provides that they shall assemble at the auditor's office, in Frankfort, on the first day of September in each year, for the purpose of fixing valuations, and with that view are required to examine the reports made by the officers of the roads. This is notice to the companies, and to require actual notice to every one interested, if the
64 board had supervisory power over all property in the State, it would be altogether impracticable. Nor will it answer to say that, because there — only a few lines of railroad within the State, actual notice could be readily given, for the court would then be determining the constitutionality of the act by the extent of this supervisory power. As we construe this act, although in the nature of an original assessment, the parties had the right to be heard, and were in fact heard, before the board passing on the question of valuation. If actual notice is necessary, and the right to be heard expressly provided for by statute in such cases, then it is immaterial what may have been embodied in the constitution of the State of Illinois, those cases fall within the prohibition of the Fourteenth Amendment if the views of counsel prevail as to its construction. The opinion in the tax cases from that State covers the entire
65 ground, and we are not only disposed to follow it because it disposes of the constitutional question, but for the reason that it recognizes and establishes a sound and conservative doctrine with reference to State taxation. It is further argued that, as a board, the commissioners have no power to increase the value of such property, and that their duty on this point is confined to the equalization of the valuation as reported by the various companies. We do not so understand the enactment, but in our opinion the prime object was to fix the true value and increase each valuation or the aggregate value if in the opinion of the board the value was too low. It is, in fact, an assessing board, and the value fixed by the commissioners must stand. We find no discrimination made against the corporation in favor of the citizen. The same taxes are paid upon the same values and kinds of property, and we
66 perceive no reason for disturbing the judgement below. The same is now affirmed in each case.

I, Thomas J. Henry, clerk of the court of appeals for the Commonwealth of Kentucky, do certify that the foregoing and annexed 60 pages contains a true and complete transcript of the record therein set out, of The Cincinnati, New Orleans and Texas Pacific Railway Company, appellants, *vs.* The Commonwealth of Kentucky, appellee, as appears of record in my office.

Witness my hand and seal of office, office at Frankfort, Kentucky, this 8th day of January, 1884.

[Seal of Kentucky Court of Appeals.]

THOMAS J. HENRY, *C. C. A.*
THOMAS G. POORE, *D. C.*

67 *Bond.*

Supreme Court of the United States.

THE COMMONWEALTH OF KENTUCKY
vs.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY.

Know all men by these presents, That we, The Cincinnati, New Orleans and Texas Pacific Railway Company and Jonathan D. Hearne, are held and firmly bound unto the Commonwealth of Kentucky in the sum of twelve thousand ($12,000.00) dollars; for the prompt payment of which, well and truly to be made, we do bind ourselves, and each of us, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such, that whereas the above-named The Cincinnati, New Orleans and Texas Pacific Railway Company hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the court of appeals of the Commonwealth of Kentucky:

Now, therefore, if the above-named The Cincinnati, New Orleans and Texas Pacific Railway Company shall prosecute its said writ of error to effect, and answer all costs and damages if it
68 should fail to make good its plea, then this obligation shall be void; otherwise, to be and remain in full force and effect.

In testimony whereof, The Cincinnati, New Orleans and Texas Pacific Railway Company, by John Scott, its president, and said Jonathan D. Hearne and —— have executed these presents on the thirty-first day of January, A. D. 1884.

[The Cincinnati, New Orleans & Texas Pacific Railway Company. Seal. Ohio.]

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY,
By JOHN SCOTT, *President.*
JONATHAN D. HEARNE. [SEAL.]

Attest:
H. H. TATNEY, *Sec.*

This bond is approved Feb'y 1st, 1884.

THOMAS F. HARGIS,
Chief Justice of Kentucky.

69 THE STATE OF OHIO, *County of Hamilton:*

Jonathan D. Hearne, being sworn, says: That he is a resident of the State of Kentucky, and is the owner of property therein situated, over and above his indebtedness, to an amount equal to twenty thousand ($20,000.00) dollars, and that such property is subject to execution in the State of Kentucky.

JONATHAN D. HEARNE.

Sworn to and subscribed in my presence, this 31st day January, A. D. 1884.

CHARLES M. CIST,
Notary Public, Hamilton County, Ohio.

70 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of the State of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Cincinnati, New Orleans and Texas Pacific Railroad Company, appellant, and The Commonwealth of Kentucky, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction
71 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption especially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said appellant, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the

said Supreme Court, the thirteenth day of February, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal of the 6th Circuit Court, Ky. Dis. U. S. of America.]

JOSEPH C. FINNELL,
Clerk of the Circuit Court of the United States, Ky. Dist.

Allowed by—
THOMAS F. HARGIS,
Chief Justice of Court of Appeals of Kentucky.

72 United States of America to the Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the Commonwealth of Kentucky, wherein The Cincinnati, New Orleans and Texas Pacific Railroad Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness the Honorable Thos. F. Hargis, chief justice of the court of appeals of the Commonwealth of Kentucky, this 1st day of February, in the year of our Lord one thousand eight hundred and eighty-four.

THOS. F. HARGIS,
Chief Justice.

Citation accepted, further notice waived, and appearance of Commonwealth of Kentucky entered.

Feb'y 2, 1884.

P. W. HARDIN,
Att'y Gen'l.
A. DUVALL,
Att'ys for Defendant in Error.

73 *Certificate of Hon. Thos. F. Hargis, Chief Justice of the Court of Appeals of Kentucky.*

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY
vs.
THE COMMONWEALTH OF KENTUCKY.

The Cincinnati, New Orleans and Texas Pacific Railway Company having prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment of the court of appeals of the Commonwealth of Kentucky, rendered December 18th, 1883, affirming a judgment of the Franklin circuit court of the 1st day of March, 1883, adjudging that the Commonwealth of Kentucky recover of the said Cincinnati, New Orleans and Texas Pacific Railway Company the sum of $28,632.72, with costs. It is now hereby certified

that in the record proceedings, and also in the judgment, in said court of appeals there was drawn in question the validity of a statute of said Commonwealth of Kentucky on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of the validity of the statute.

Given under my hand, as chief justice of the court of
74 appeals of the Commonwealth of Kentucky, this 1st day of February, A. D. 1884.

THOMAS F. HARGIS,
Chief Justice of Kentucky.

Endorsed on cover: Kentucky court of appeals. No. 497. The Cincinnati, New Orleans and Texas Pacific Railroad Company, plaintiff in error, *vs.* The Commonwealth of Kentucky. Filed 18th February, 1884.